

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE WILLIAMS,

Plaintiff,

No. CIV S-03-2518 FCD DAD P

vs.

COUNTY OF SACRAMENTO  
SHERIFF'S DEPARTMENT, et al.,

ORDER

Defendants.

\_\_\_\_\_/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. In that action plaintiff alleges that on May 11, 2003 he was assaulted by Sacramento County Sheriff's Deputies in the Main Jail. Before the court are four discovery motions: (1) plaintiff's March 2, 2005 motion to compel production of documents<sup>1</sup>; (2) plaintiff's July 25, 2005 motion styled, "Motion Of Opposition To Defendant's Subpoena Dueces [sic] Tecum"<sup>2</sup>; (3) plaintiff's July 27, 2005 motion styled, "Motion Of Hearing Re Discovery Disagreement To Defendent [sic] Lt. Powell's Responses To Plaintiff's Request For Production

////

<sup>1</sup> Court document number 42.

<sup>2</sup> Court document number 44, and docketed as "Letter."

1 Of Documents, And Motion To Compel”<sup>3</sup>; and (4) defendants’ August 17, 2005 motion, styled,  
2 “Motion To Quash Plaintiff’s Subpoena To Lt. Tracy Petrie Of The Sacramento County  
3 Sheriff’s Department Internal Affairs Division.”<sup>4</sup>

4 In plaintiff’s March 2, 2005 motion to compel the production of documents, he  
5 contends that defendants were served with a request for production of documents on January 14,  
6 2005 and have failed to produce any documents or to oppose the discovery request. On March  
7 17, 2005, defendants filed their opposition to this motion. Counsel for defendants contends that  
8 plaintiff’s request for production was mailed to counsel but was not directed to a specific  
9 defendant. Rather, the request was propounded as follows, “TO: JONATHEN [sic] B. PAUL,  
10 ATTORNEY FOR DEFENDANT [sic], AND THE CUSTODIAN OF RECORDS,  
11 SACRAMENTO SHERIFF’S DEPARTMENT.” (Defs.’ Opp’n (Defs.’ First Opp’n), filed 8-17-  
12 05, at 2.) Counsel argues that he notified plaintiff of the deficiency and requested that plaintiff  
13 redirect his request for production to a specific defendant. Counsel also advised plaintiff that  
14 should he bring a motion to compel, defendants would seek the imposition of sanctions because  
15 the bringing of such a motion under the circumstances would be frivolous. Counsel for  
16 defendants argues that plaintiff is requesting documents relating to all seven defendants and that  
17 no one individual would have access to the other defendants’ personnel records. (Id. at 3.)  
18 Counsel also argues that to the extent that the request for production is directed to Sheriff Lou

19 /////

20 /////

21 /////

22 /////

23 /////

---

25 <sup>3</sup> Court document number 46.

26 <sup>4</sup> Court document number 53.

Blanas, he is not a party to this action.<sup>5</sup> (Id.) Finally, defendants seek \$218.50 in attorney fees<sup>6</sup> as a sanction for bringing a frivolous motion. (Id. at 3-4.)

The court will deny plaintiff's motion to compel production of documents filed March 2, 2005 . Plaintiff's discovery requests must be directed to a specific defendant and plaintiff should tailor his discovery requests so that they are directed to the defendant who has possession, custody or control of the requested documents. The court will not order the imposition of monetary sanctions at this time. Although plaintiff was advised by defense counsel that his requests for production of documents were deficient, the court does not find that his motion was made in bad faith in light of the fact that plaintiff is proceeding pro se.

In his July 25, 2005 motion styled, "Motion Of Opposition To Defendant's [sic] Subpeona [sic] Dueces [sic] Tecum," plaintiff seeks a protective order or an order quashing a defense subpoena served on litigation coordinator Lori Shipman, as the custodian of records for Centinela State Prison where plaintiff is incarcerated.<sup>7</sup> The subpoena sought "Any And All Records/Files In Your Possession Regarding Lawrence Williams (Inmate #H96315)." (Pl.'s Mot. of Opp'n, Attach., Subpoena In A Civil Case.) Plaintiff argues that a copy of the subpoena was never served on plaintiff, that the subpoena failed to provide sufficient time to respond to the discovery request and that the discovery request is overly broad and seeks privileged information. (Pl.'s Mot. of Opp'n at 3.) Plaintiff seeks monetary sanctions of \$347.24 for the time he spent doing research and typing in connection with his opposition to the subpoena, as well as for costs

---

<sup>5</sup> On July 1, 2004, the court ordered that service was appropriate for defendants Dickerson, Douglas, Bacocho, Zwolinski, Murray, Johnson, and Powell. These defendants were subsequently served with process and filed their answer. Although Sheriff Blanas was named in plaintiff's amended complaint, the court did not order service with respect to him because he was named as a supervisory defendant and plaintiff had not alleged a sufficient causal link between this defendant and the claimed constitutional violation.

<sup>6</sup> Counsel states that his hourly rate for attorney fees is \$125 and that he expended 1.9 hours in researching and drafting the opposition. (Opp'n at 4.)

<sup>7</sup> Plaintiff filed a similar request on August 24, 2005 in a document styled, "Reply To Defendant's [sic] Opposition To Plaintiff's Motion To Quash Subpeona [sic]."

1 incurred. (Id. at 4.) On August 12, 2005, defendants filed their response in which they argue that  
 2 plaintiff's motion to quash the subpoena is moot because defendants subsequently served an  
 3 amended subpoena seeking only plaintiff's medical records and that plaintiff consented to the  
 4 release of those documents. On August 24, 2005, plaintiff filed a reply. Plaintiff argues that the  
 5 first subpoena is still valid and that defendants may seek additional documents based on that  
 6 subpoena. The court finds that the first subpoena served by the defendants has been superceded  
 7 by the amended subpoena. Compliance with the first subpoena will not be enforced. Therefore,  
 8 plaintiff's motion to quash the subpoena will be denied as moot.

9           On July 27, 2005, plaintiff filed a motion styled, "Motion Of Hearing Re  
 10 Discovery Disagreement To Defendant [sic] Lt. Powell's Responses To Plaintiff's Request For  
 11 Production Of Documents, And Motion To Compel (Pl.'s Mot. Re Def. Powell')." Therein  
 12 plaintiff seeks a court order requiring defendant Powell to produce all records pertaining to the  
 13 alleged assault on May 11, 2003, including interview tapes, addresses of witnesses, duty rosters  
 14 and other investigative documents. (Id. at 7-8.) Plaintiff argues that he "is entitled to the  
 15 personnel records of officers indirectly involved in an attempt [sic] to show a link or substantial  
 16 contact between officers and the alleged misconduct." (Id. at 7.) Plaintiff also seeks monetary  
 17 sanctions in the amount of \$300.00 in connection with this motion to compel. In their  
 18 opposition, filed on August 17, 2005<sup>8</sup>, defendants assert that plaintiff is seeking all documents  
 19 contained in Internal Affairs File No. 03-1A-67. (Def.s' Opp'n to Pl.'s Mot. To Compel Product.  
 20 of Powell Docs., at 1.) Defendants have attached to their opposition a copy of their response to  
 21 plaintiff's discovery request.

#### 22           Request for Documents No. 1

23           All records including but not limited to divisional or internal  
 24 office reports pertain [sic] to the incident of 5-11-03.

24       /////

---

26           <sup>8</sup> Court document number 52.

1                    Response

2                    Objection. Responding party objects as this Request on the  
3 grounds that it is compound, vague, ambiguous, overbroad and  
4 seeks documents wholly irrelevant to the allegations set forth in the  
5 complaint. Furthermore the request is vague and ambiguous  
6 insofar as Plaintiff fails to define "incident." Likewise, the  
7 Request is objectionable as it seeks documents protected by the  
8 official information privilege, California Penal Code Section 832 et  
9 seq., California Evidence Code Sections 1040 & 1043, and violate  
10 the privacy rights of both the individual officers and complainants.  
11 Thus, no privileged documents will be produced; see attached  
12 privilege log.

13                    However, without waiving the foregoing objections, responding  
14 party shall produce Inmate Incident Report, Inmate Incident Report  
15 Narrative, and Inmate Incident Report Summary Listing for Report  
16 No. 0869787203; Incident Reporting Summary; and Request for  
17 Reclassification. See enclosed documents Bates 000001-000007.  
18 Additionally, see the correspondence between Plaintiff and the  
19 representatives of the Internal Affairs Division. See enclosed  
20 Bates 000009-000033.

21                    (Id., Attach., Ex. A at 2-3.) Defendants argue that plaintiff's motion is premature because he  
22 failed to meet and confer prior to making the motion as required by Federal Rules of Civil  
23 Procedure, Rule 35(a)(2)(b). Defendants also argue that portions of the Internal Affairs files  
24 contain confidential and personal information of the officers and inmates who were interviewed  
25 in connection with the investigation. (Def.s' Opp'n to Pl.'s Mot. To Compel Product. of Powell  
26 Docs. at 2.) Defendants request that the court either conduct an in camera review of the Internal  
Affairs file or direct the parties to craft a protective order limiting the disclosure and permitting  
redaction of personal confidential information which is unrelated to this lawsuit. (Id. at 2-3.)

                    The court will grant plaintiff's motion to compel filed July 27, 2005 in part.  
Defendants will be ordered to produce the contents of the Internal Affairs File No. 03-1A-67.  
Defendants may redact personal information, such as the residence addresses and telephone  
numbers of staff and inmates. If defense counsel believe that the entire contents of any  
particular document contained in the Internal Affairs file is privileged, they must file a motion for  
a protective order seeking relief from this order within ten days of the date of the service of this

1 order. Defendants are cautioned, however, that a claim that an official document is privilege  
2 must be asserted by the head of the department which has control over and personal knowledge  
3 concerning the document. See Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995).  
4 Finally, the court advises the parties that pursuant to the court's discovery order, filed on October  
5 12, 2004, Local Rule 37-251 which requires that parties meet and confer prior to filing a  
6 discovery motion, does not apply in this action in light of plaintiff's pro se status. Plaintiff's  
7 request for monetary sanctions will be denied.

8           On August 17, 2005, defendants filed a motion, styled, "Motion To Quash  
9 Plaintiff's Subpoena To Lt. Tracy Petrie Of The Sacramento County Sheriff's Department  
10 Internal Affairs Division" (Defs.' Mot. to Quash). Defendants contend that although the court  
11 had not yet ruled on plaintiff's motion to compel the production of Internal Affairs Report 03-IA-  
12 67, plaintiff issued a subpoena to Lt. Tracy Petrie of the Sacramento County Sheriff's  
13 Department, Internal Affairs Division, requiring her to appear before this court and produce the  
14 Internal Affairs file on the May 11, 2003 incident. Defendants argue that the subpoena should be  
15 quashed for the following reasons: First, the subpoena is defective because it was not issued by  
16 the Clerk of the Court or an attorney, fails to include the text from Rule 45(c) and 45(d) of the  
17 Federal Rules of Civil Procedure, the subpoena was mailed to Lt. Petrie rather than being  
18 personally served, and no witness fees were tendered with the subpoena. (Id. at 3.) Second, the  
19 subpoena seeks the same documents which are the subject of plaintiff's request for production of  
20 documents which is pending before this court and has been addressed above. (Id.) Defendants  
21 contend that the documents are in their possession and that there is no purpose in requiring Lt.  
22 Petrie to comply with the subpoena.

23           In light of the court's order concerning plaintiff's motion to compel the  
24 production of the Internal Affairs File No. 03-1A-67, and defendants' assertion that the contents  
25 of File No. 03-1A-67 are in defendant Powell's possession, defendants' motion to quash the  
26 subpoena mailed to Sheriff's Lt. Tracy Petrie will be granted.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's March 2, 2005 motion to compel production of documents is denied;

2. Plaintiff's July 25, 2005 motion styled, "Motion Of Opposition To Defendant's Subpoena Dueces [sic] Tecum, is denied as moot;

3. Plaintiff's July 27, 2005 motion styled, "Motion Of Hearing Re Discovery Disagreement To Defendent [sic] Lt. Powell's Responses To Plaintiff's Request For Production Of Documents, And Motion To Compel," is granted in part;

a. Within ten days from the service of this order, defendant shall provide plaintiff with a copy of the contents of the Internal Affairs File No. 03-1A-67;

b. Personal information, such as private addresses and telephone numbers shall be redacted on the copies of the documents in the file;

c. Except for use as an exhibit to documents filed in this action or as an exhibit to be offered at trial, plaintiff shall not make copies of the documents from the Internal Affairs File No. 03-1A-67; the documents may not be used outside the scope of this litigation or disseminated to any person not a party to or representing a party to this litigation; all copies made by plaintiff shall be submitted to defendants' counsel at the conclusion of this case;

d. Any motion for a protective order concerning any documents in Internal Affairs File No. 03-1A-67, shall be filed within ten days of service of this order; and

4. Defendants' August 17, 2005 motion, styled, "Motion To Quash Plaintiff's Subpoena To Lt. Tracy Petrie Of The Sacramento County Sheriff's Department Internal Affairs Division is granted.

DATED: March 3, 2006.

DAD:4  
will2518.disc

  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE